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JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, A.D., 1957.

No. 791

STELLA C. DAVIS and BETTY HORRIGAN,

Appellants,

vs.

ELLIOT W. SEYMOUR,

Appellee,

JURISDICTIONAL STATEMENT AND BRIEF.

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BETTY HORRIGAN, PRO SE
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ELLIOT W. SEYMOUR,

Appellee,

JURISDICTIONAL STATEMENT AND BRIEF.

To the Honorable Earl Warren, Chief Justice, and Associate Justices of the Supreme Court of the United States:

Stella C. Davis, and Betty Horrigan, appellants, Pro Se, hereby present their Jurisdictional Statement in support of their appeal to this court to review the Order of the United States District Court for the Northern District of California, Southern Division entered on November 20, 1956, dismissing their complaint. The Honorable, George B. Harris did not render an opinion in this cause of action. The court did not enter findings of Fact or conclusions of Law in this action.

JURISDICTION.

The United States District Court for the Northern District of California, Southern Division entered it's Order dismissing the plaintiff's complaint upon Motion to Dismiss by the appellee on November 20, 1956.

The appellants believe this Honorable Court has the power to review the Order of the district court on appeal pursuant to 28 U.S.C. section 1252. *Andrew County* v. *Maxwell,* 347 Mo. 156, 146 S.

The court took jurisdiction of the subject matter of criminal violations alleged in the complaint under a civil action, namely allegations based on U.S.C. Title 18, sec. 371, the general conspiracy statue, 18 U.S.C. sec. 241, *U. S.* v. *Patrick C. C.,* Tenn. 1893 54 F. 338. Civil Rights, also 28 U.S.C.A. sec. 1343(1) act done in furtherance of any conspiracy mentioned in sec. 47 title 8 U.S.C. *Collan* v. *Wilson,* 127 U.S. 540. *Avery* v. *State of Ala.* 1940 60 S. Ct. 308 U.S. 444-84 L. ed. 377.

Unlawful Searches may violate the 4th Amendment to the Constitution made by subterfuge or fraud rather than by force. *Carroll* v. *U.S.,* 267 U.S. 132. Ex Parte Virginia, 100 U.S. 346-7.

The court excluded considerations of the FACTS and MERITS of the action. 12 U.S.C. sec. 38, National Bank Act—Ch. 106 6 13 Stat. 101 *Christopher* v. *Norvell,* 291 U.S. 216 S. Ct. 502—L ed. 732.

Interstate conspiracy wherein defendant made use of Federal Communications and U.S. Mail to perpetrate fraud and conspiracy upon appellants. *Magnum Import Co.* v. *McCoty,* N.Y. 1923-43 S. Ct. 262 U.S. 159 67 L. ed.

922. Ray M. Foreman, mentioned in the complaint was an "Officer of the United States" and Justice Department at that time. *Hoeppel* v. *U.S.*, 1936, 85 F. 2d, 66 App. D.C. Article 2 section 109 of the Constitution.

Section 1252, U.S.C. 28 permits direct appeals from U.S. district courts regarding Crimes and Criminals, and there are federal questions of substance not theretofore determined by the Supreme Court of the United States in this cause of action.

The office of attorney is of public concern and regards the administration of Justice, as attorneys are "officers of the court." Bradley-7 Wall, 364, 19 L. ed. 214. Also 28 U.S.C.A. sec. 1442, "Misconduct & Color of office", *Logeman* v. *Stock*, 337, 81 F. Supp. 1949 of U.S.C. title 18, sec. 203. Also 28 U.S.C.A. sec. 1339, Ch. 646-62 Stat. 932, Postal Matters.

STATUTES INVOLVED

A conspiracy to invade the rights of another person is a Grave Offense-for which a jury trial is requisite • • •. *Collan* v. *Wilson*-127 U.S. 540.

Unlawful Search may violate the 4th Amendment to the Constitution made by Subterfuge or Fraud rather than by force. *Carroll* v. *U. S.* 267 U. S. 132. Defendant made unlawful searches for assets of the plaintiff's father.

Title 28 U.S.C.A. sec. 1343(1) Civil Rights, deprivation of any right of a citizen of U. S. by any act done in furtherance of any Conspiracy mentioned in sec. 47 title 8. Also title 18-sec. 241. *U. S.* v. *Patrick* C.C. Tenn. 1893 54 F 338, also *Avery* v. *State of Alabama*, Ala. 1940-60 S. Ct. 308 U.S. 444-84 L. ed. 377.

The questions presented by this appeal are:

1. Illegal Searches made by the respondent of the appellant's late father's assets, while still alive and in his last illness in the hospital in San Francisco, and in possession at the time, of the ring (7) keys, which contained a safety deposit box key of his. Article IV to Constitution. *Carroll* v. *U.S.*, 267 U.S. 132 (.....).

2. Defendant-appellee obtained confidential information (while making these unlawful Searches without a Court Order) before appellant's father's death, and regarding his assets and property from certain National Banks in San Francisco, Calfiornia, 12 U.S.C. sec. 38, Nat'l. Bank Act. Ch. 106 6 13 Stat. 101; *Christopher* v. *Norvell*, 291 U.S. S. Ct. 502 L. ed. 732.

3. The appellee's use of Information, Facts and Legal File and investigator, James S. Ball's report which he obtained from the appellant, Stella C. Davis, together with money to carry on an Interstate Fraud and Conspiracy with Ray M. Foreman, Assistant U. S. Attorney in Danville, Illinois. The defendant used Federal Communications and United States Mail to carry on this Fraud and Conspiracy upon the plaintiffs. *Magnum Import Co.* v. *McCoty*, N.Y. 1932, 43 S. Ct. 262 U.S. 159, 67 L. ed. 922 (p. .....). *Hoeppel* v. *U.S.*, 1936, 85 F. 2d, 66 App. D.C. Article 2 sec. 109 of Constitution. (p. .....) 18 U.S. Code sec. 371, 241, sec. 1343, (p. .....). 28 U.S.C. sec. 1343(1). (p. .....). 39 U.S.C. 1341.

4. The appellants were not notified of the September 27, 1956 Court Order Extending Time Of The Defendant to Answer the Complaint of the plaintiff, Stella C. Davis, either by the District Court or by the appellee. 18 U.S.

Code sec. 241-1343 and 28 U.S.C. 1332(1) violation of the Federal Rules of Procedure and Due Process Law. 3 Story Const. 264-661, *People* v. *Skinner,* Cal. 110 P. 2d 41 45 etc.

5. The district court took jurisdiction of the subject matter under a Civil Action when some of the allegations in the complaint are violations of the Criminal Code. 18 U.S.C. sec. 371, 241, 335, 1343(1) also 12 U.S.C. sec. 38, 28 U.S.C. sec. 1252, 507 1332.

6. The court overlooked the untrue statements in the Affidavit of appellee in support of his Motion to Dismiss contrary to his affidavit filed in Coles County Probate Court and some of the Exhibits filed in said District Court. Appellee had interest in probate proceedings.

7. The court granted appellee's Motion to Dismiss on November 20, 1956 without trying the issues of FACT and EVIDENCE presented by Exhibits and supporting Affidavits by the appellants filed in said court.

8. There are federal questions of Substance not theretofore determined by the Supreme Court of the U.S. in this cause of action involving an "Officer of the United States" and the Justice Department of the United States together with the appellee, Elliot W. Seymour. *Hoeppler* v. *U.S.*, 1936, 85 F. 2d 66 App. D.C. (p. .....) 28 U.S. Code 507.

9. Illegal Searches made by the appellee was a direct violation of Article 4 Amendment to the Constitution.

STATEMENT OF FACTS.

1. The plaintiff complains that on or about March 19, 1951, the defendant, Elliott W. Seymour, was employed by the plaintiff upon instructions of her attorney, Ray M. Foreman, Assistant United States Attorney, for the Eastern District of Illinois, via a long distance telephone conference to the Post Office in Danville, Illinois.

2. That during the course of said employment the defendant, Elliot W. Seymour procured Twenty Dollars ($20.00) cash, a key ring with seven keys (among of which were safety deposit box keys) that belonged to the plaintiff's father who was then in his last illness; copies of legal documents, and copies of a report by Investigator, James S. Ball. These copies amounted approximately to the sum of Five Hundred Dollars or more ($500.00) to compile.

3. The defendant, Elliot W. Seymour, held interviews with the plaintiff, Stella C. Davis for the purpose of:

(a) Investigating and seeking to determine the net worth of her father, William Daviditis, both in the City of San Francisco, County of San Francisco, State of California and in the State of Illinois.

(b) To obtain a guardian or conservator of the plaintiff's father in order to secure funds for his support and to preserve his assets.

(c) To ascertain his net worth through this purported conservatorship or guardianship as a depositor and customer of the National Bank of Mattoon, Illinois, and other financial institutions in Mattoon, Illinois wherein the plaintiff's father had financial and business dealings.

(d) To investigate the Separate Maintenance Action in The City Court of Mattoon, Illinois in conjunction with the National Bank of Mattoon's interest and participation in said action.

(e) To investigate into the irregularities of the aspects of said Separate Maintenance Decree ordered by the City Court of Mattoon, Illinois, whereas Josephine Daviditis, was out of the jurisdiction of said court and at the time residing in the City of San Francisco, California with her daughter, Matilda Marion, from on or about September 18, 1949 and was not physically present in the State of Ilinois until April 2, 1951.

4. That in pursuance of these matters the defendant obtained certain information and facts from the plaintiff, Stella C. Davis, which he represented would be used in making an investigation concerning the above mentioned irregularities or in obtaining a guardian or conservator in order to get funds for the support of the plaintiff's father who was in his last illness and to ascertain his net worth prior to September 9, 1949 and always thereafter during the defendants employment as her counsel in the State of California.

5. That in addition to and in furtherance of this scheme as the result of the information, the ring of keys (which included safety deposit box keys of the plaintiff's sick father) copies of legal documents and investigators report, obtained from the plaintiff by the defendant, Elliot W. Seymour, and who was also instrumental in aiding, Ray M. Foreman, Assistant United States Attorney for the Eastern District of Illinois, in securing the National Bank of Mattoon, Illinois, as administrator of the estate of the plaintiff's deceased father.

6. That, in fact, the defendant never filed any application petition or any other instrument in court or otherwise for a guardianship or conservatorship, but instead

kept stalling the plaintiff and her family until the plaintiff's father passed away on March 23, 1951. The defendant did not prepare or file any proceedings in the probate court of the City of San Francisco, California, said city where the plaintiff's father died in order to protect or preserve the assets of the plaintiff's father nor do anything else to protect the rights of the plaintiff as an heir before she left the State of California for the State of Illinois.

7. The defendant made unlawful searches of the plaintiff's father while he was still alive, using the ring of seven keys above mentioned as his authority to do so without legal permission granted him and made no effort to obtain release of any funds of the plaintiff's father from the Sea Board Branch of The Anglo California National Bank for medical and hospital bills of said plaintiff's ill father. The defendant did not assist in seeing that the funeral expenses were paid in order that they could take the plaintiff's father's body out of the state of California for burial in the State of Illinois.

8. The defendant entered into a conspiracy with his office employee thereby preventing the plaintiff from obtaining her legal file when it was necessary that she leave the State of California for transporting her father's body for burial in the State of Illinois, and at later dates ignored her requests for this file via long distance phone calls from Chicago, Illinois.

9. On August 28, 1952, the defendant gave the plaintiff's sister Betty Horrigan, a letter purporting to be a copy of the original letter that was supposed to be inclosed with copies of legal documents and investigators report and purported to have been mailed to the plaintiff in care of Ray M. Foreman, Esquire, Attorney at Law, Mattoon, Illinois whereas the defendant had the true

address of Said Ray M. Foreman, Assistant United States Attorney, United States Post Office, Danville, Illinois. By this act the said file above mentioned was never received by the plaintiff.

10. That in fact, the defendant never filed any information guardianship, special or regular probate proceedings or any other proceedings in spite of this purported investigation and acquirement of money, ring of keys, legal documents and copies of the investigator, James S. Ball report and as a result of this false, fraudulent and deceitful conduct, the plaintiff have suffered great loses in monies, bonds, realty, copies of legal documents, investigator's report and other valuable assets in the amount of Forty Thousand Dollars ($40,000.00).

Conclusion.

That there was a plain and manifest abuse of the discretion of the district court in granting the appellee's Motion to Dismiss appellant's cause of action in said court and the Plaintiffs pray for a reversal of the Order to Dismiss entered in said district Court on November 20, 1956.

Respectfully submitted,

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Chicago, Illinois.

Betty Horrigan, Pro Se.
1303 Carmen Avenue,
Chicago, Illinois.

APPENDIX "A".

In The United States District Court
For the Northern District of California
Southern Division

Stella C. Davis,
Plaintiff,
Betty Horrigan,
Party Plaintiff,
Petitioner in Intervention,

vs.

Elliot W. Seymour,
Defendant.

Civil Action
No. 35831

DOCKET ENTRIES.

George B. Harris

For Plaintiff, and Petitioner in Intervention as Party Plaintiff, Pro Se. Stella C. Davis, 4916 N. Magnolia Ave., Chicago, Illinois.

Betty Horrigan, 1303 Carmen Avenue, Chicago, Illinois.

For defendant: Elliot W. Seymour, 785 Market Street, San Francisco, California, Pro Se.

Basis of Action: Title 28, Section 1332(1), Diversity of Citizenship and violations of Title 28, sec. 1343, sec. 1335, sec. 1339., Title 18, sec. 241, and sec. 1343, also Title 39, section 1341, of the U.S. Code —Seeks $40,000.00 plus costs, etc.

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